

# **Exhibit P**

**In the Matter of:**

FTC, et al. v. Quincy Bioscience Holding, et al.

*August 6, 2020*  
*Kenneth Lerner - Confidential*

**Condensed Transcript with Word Index**



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1 (Pages 1 to 4)

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1 mean by "team."

2 **Q Is there a group of people whose job**  
3 **primarily is to do research or to be involved in**  
4 **the research?**

5 A In a clinical -- from a clinical  
6 standpoint?

7 **Q Yes, human research. Yes.**

8 A It would be the people I just  
9 described.

10 **Q Okay.**

11 A There -- there are other people who  
12 get involved, but that would be the team who are  
13 typically involved in research.

14 **Q Okay. And is Mr. Underwood involved**  
15 **in research in the human research that he does?**

16 MS. METZINGER: Objection.

17 BY MS. RUSK:

18 **Q Mr. Lerner, that -- that will happen**  
19 **throughout the deposition, and you can feel free**  
20 **to go ahead and answer. She's objecting to put**  
21 **on the record.**

22 A Mr. Underwood's involved in research  
23 in that when the -- when we were discussing the  
24 possible study, when I got a draft of a protocol  
25 or working on some ideas, I typically would be

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1 with meeting him and bouncing this back and  
2 forth. Occasionally Mr. Olson would be -- Todd  
3 Olson would be in there along with members of  
4 what I'll say -- call my staff, some of the  
5 people I had listed earlier. So involvement,  
6 it -- it would be there, we were working with the  
7 protocol, and --

8 **Q I'm sorry. I'm -- I'm just asking**  
9 **about Mr. Underwood right now. So is there any**  
10 **other thing he does with respect to research?**

11 A Are you asking whether he's performing  
12 tests? I --

13 **Q I'm asking you what role he has with**  
14 **respect -- with respect to human research**  
15 **projects.**

16 A He was -- he would be -- he would be  
17 in the meetings where we were looking at  
18 development of protocol when we were going  
19 through the analysis. He did not perform the  
20 research itself.

21 **Q Was he involved in writing up results?**

22 MS. METZINGER: Objection.

23 THE WITNESS: I would say in the edit  
24 team.

25 BY MS. RUSK:

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1 **Q Okay. And can you tell me if Michael**  
2 **Beaman had any role when it came to human**  
3 **clinical research of the company?**

4 A I think -- I may have had some  
5 discussions with him, but no day-to-day role.

6 **Q Okay. Does Mr. Beaman have to approve**  
7 **a new human research project?**

8 MS. METZINGER: Objection.

9 THE WITNESS: I do not -- no, I do not  
10 believe he has to approve.

11 BY MS. RUSK:

12 **Q Do you know if he has to approve**  
13 **stunding -- excuse me -- funding for research**  
14 **studies?**

15 MS. METZINGER: Objection.

16 THE WITNESS: I'm not aware of if  
17 any -- that -- that discussion takes place.

18 BY MS. RUSK:

19 **Q Can you tell me if you typically**  
20 **inform Mr. Beaman of new studies that the company**  
21 **is starting?**

22 A I think --

23 MS. METZINGER: Objection.

24 THE WITNESS: I believe in  
25 conversa- -- I do occasionally have conversations

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1 with Mr. Beaman about some studies, but I  
2 don't -- it's not -- wasn't par- -- it isn't and  
3 wasn't part of my duties to inform him that  
4 "We're starting this study."

5 BY MS. RUSK:

6 **Q The same question for whether you**  
7 **report to him the results of human clinical**  
8 **studies.**

9 A I don't officially report to him.

10 **Q Okay.**

11 A He may -- he may call and ask me or I  
12 may call and tell him something, but I don't  
13 report that to him specifically.

14 **Q Okay. When you're doing a human**  
15 **clinical study, do you have meetings with the**  
16 **other people involved in the research project?**

17 A Yes.

18 **Q And during a study, how regular are**  
19 **those meetings?**

20 MS. METZINGER: Objection.

21 THE WITNESS: I would say those  
22 meetings occur on a -- sometimes weekly but more  
23 frequently biweekly -- biweekly or monthly.

24 BY MS. RUSK:

25 **Q And are there notes kept on those**

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1 meetings?

2 MS. METZINGER: Objection.

3 THE WITNESS: I may have taken some  
4 notes. Other people may have taken notes. But I  
5 can't -- there wasn't a -- there is not, to my  
6 knowledge, a record. No one was acting as a --  
7 as a scribe to take down notes of a meeting.

8 BY MS. RUSK:

9 **Q Okay. Can you tell me if you ever**  
10 **report to the board of directors on research**  
11 **being done at Quincy?**

12 A I --

13 MS. METZINGER: Objection.

14 THE WITNESS: I presented to the board  
15 of directors, I believe, twice on the -- on -- I  
16 know one time it involved research. The other  
17 time -- I don't remember whether it involved  
18 research or intellectual property.

19 BY MS. RUSK:

20 **Q Okay.**

21 A I do not regularly communicate --  
22 communicate with the board about research.

23 **Q Okay. All right. Thank you.**

24 **Mr. Lerner, I'm going to focus in a**  
25 **moment on the Madison Memory Study, and then I**

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1 **will have questions for you later today on some**  
2 **other human clinical studies on apoeaquorin and**  
3 **Prevagen. And I may refer to apoeaquorin as AQ**  
4 **for simplicity, if that is okay. And first I**  
5 **have some general questions about human clinical**  
6 **research in general done at Quincy.**

7 A Michelle --

8 MS. METZINGER: Michelle, are you  
9 switching to the 30(b)(6) deposition right now?

10 MS. RUSK: No, I am not. I'm just  
11 giving him a heads-up for what I'm going to be  
12 covering.

13 MS. METZINGER: Okay. Thank you.

14 THE WITNESS: Michelle.

15 BY MS. RUSK:

16 **Q Yes.**

17 A Not to throw a wrench at you. If you  
18 could refer to apoeaquorin instead of AQ as APO  
19 AQ.

20 **Q Sure.**

21 A That's -- that's the shorthand I use  
22 for apoeaquorin. AQ for me is just aequorin, so  
23 I don't want to get confused.

24 **Q I will try to do that. That will be a**  
25 **little bit easier for the court reporter than the**

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1 **full word. If I do slip up, I will not be**  
2 **talking about aequorin today. So if I do slip**  
3 **up, I do mean APO AQ.**

4 **So some general questions about human**  
5 **clinical research at Quincy. First of all, is**  
6 **the human research all done in Q- -- in-house in**  
7 **Quincy?**

8 MS. METZINGER: Objection.

9 THE WITNESS: All of the clinical  
10 research we've done at Quincy have been done  
11 in-house.

12 BY MS. RUSK:

13 **Q Okay. Has Quincy, during your time at**  
14 **the company, ever contracted with anyone outside**  
15 **the company to do clinical research on**  
16 **apoeaquorin?**

17 A I don't believe I can answer that  
18 question because our attorneys were involved in  
19 some discussions with that.

20 **Q Well, I'm not asking you about your**  
21 **questions with attorneys. I'm just asking if you**  
22 **have -- if -- if you are aware of Quincy**  
23 **contracting out clinical research projects.**

24 MS. METZINGER: I will object here and  
25 caution the witness that if, to answer that

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1 question, he would be required to divulge  
2 privileged information, that he refrain from  
3 answering that question.

4 MS. RUSK: Yes. I understand. I'm  
5 not asking for communications. I'm just asking  
6 for a fact whether or not Quincy contracted out  
7 on human clinical research. It's a yes or no.

8 MS. METZINGER: If you want to ask him  
9 about a specific study, I would let him answer  
10 that question. But --

11 MS. RUSK: But you're instructing him  
12 not to answer this question?

13 MS. METZINGER: As -- as phrased, yes.

14 MS. RUSK: Well, let me try to  
15 rephrase this.

16 BY MS. RUSK:

17 **Q Without discussing communications with**  
18 **counsel, Mr. Lerner, can you tell me whether**  
19 **Quincy has contracted with any outside party to**  
20 **do clinical research?**

21 MS. METZINGER: I'm going to maintain  
22 that objection, Michelle. That question,  
23 while -- while you're excluding communications  
24 with counsel, that question may call for  
25 privileged information in Mr. Lerner's

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1 discussions.

2 MS. RUSK: All right. I'm going to  
3 come back to that at the end because I -- I don't  
4 think you have a basis for claiming privilege to  
5 a simple question about whether or not Quincy  
6 used outside parties for research, but I'm going  
7 to move on now.

8 MS. METZINGER: Okay.

9 MS. RUSK: We may have to hold open  
10 the deposition if we have a lot of objections  
11 like that.

12 BY MS. RUSK:

13 **Q Are there any outside entities who**  
14 **have ever been involved in doing work for Quincy**  
15 **on any human research on apoeaquorin?**

16 MS. METZINGER: Same objection.

17 I'm going to caution Mr. Lerner that  
18 if to answer that question, he would have to  
19 divulge privileged information, that he refrain  
20 from answering that question.

21 BY MS. RUSK:

22 **Q Mr. Lerner, can you answer my question**  
23 **without divulging privileged communications with**  
24 **your attorneys?**

25 A I'm going to follow Counsel's

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1 instructions to not answer the question.

2 **Q She said you could answer if you could**  
3 **do it without divulging privileged communication.**

4 MS. METZINGER: Michelle, maybe if I  
5 can take a moment to speak with Mr. Lerner,  
6 there -- there might be a way around -- around  
7 these objections.

8 MS. RUSK: Okay. Shall we take a  
9 five-minute break?

10 MS. METZINGER: Sure. That should  
11 work.

12 MS. RUSK: Okay.

13 VIDEOTAPE OPERATOR: Going off the  
14 record at 9:25.

15 (A brief recess was taken.)

16 VIDEOTAPE OPERATOR: Going on the  
17 record at 9:34.

18 MS. RUSK: Okay. Mr. Lerner, I'm  
19 going to be -- actually, could I have the court  
20 reporter read the last question that I asked.

21 (The record was read by the reporter.)

22 MS. METZINGER: I'm going to maintain  
23 that objection. I conferred with Mr. Lerner, and  
24 I am instructing him not to answer that question  
25 on the basis of attorney-client privilege and

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1 work product.

2 MS. RUSK: Okay. I do not agree that  
3 that -- on that basis, so we can return to this  
4 at the end of the day, and we may have to hold  
5 open this deposition and get this resolved by the  
6 Court. But I'm going to move on for now.

7 MS. METZINGER: Okay.

8 BY MS. RUSK:

9 **Q Mr. Lerner, can you tell me,**  
10 **specifically with respect to human clinical**  
11 **research on APO AQ, do you design the protocols**  
12 **for that research?**

13 MS. METZINGER: Objection.

14 THE WITNESS: I -- yes, I design most  
15 of the protocols for that research.

16 BY MS. RUSK:

17 **Q Okay. Is Mr. Underwood ever involved**  
18 **in the design of clinical research?**

19 MS. METZINGER: Objection.

20 THE WITNESS: I believe that if the  
21 original design comes up from -- I create the  
22 original designs. There -- Mr. Underwood may  
23 make comments or suggestions, ask questions.

24 MS. RUSK: Okay. Can the videographer  
25 get a good sound read on -- on Mr. Lerner because

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1 he's shorting out a little bit.

2 VIDEOTAPE OPERATOR: He was breaking  
3 up a little bit.

4 If you could just try speaking up, I  
5 think that might correct the issue.

6 THE WITNESS: Okay.

7 BY MS. RUSK:

8 **Q Can you tell me if you worked with**  
9 **anybody else at Quincy at the design stage of a**  
10 **study?**

11 MS. METZINGER: Objection.

12 MS. RUSK: Can I ask what the  
13 objection is?

14 MS. METZINGER: Yeah. I don't know  
15 which study you're talking about.

16 MS. RUSK: I'm talking about studies  
17 generally. These questions all are about  
18 clinical research generally at the company.

19 MS. METZINGER: Okay. Well, without  
20 knowing which -- which studies you're talking  
21 about, I believe the question's ambiguous, so  
22 that's the basis of my question.

23 BY MS. RUSK:

24 **Q Okay. Mr. Lerner, you can answer.**

25 A I've actually written up the original



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1 protocol for the study based upon looking at  
2 similar protocols, and I involve other people to  
3 add a comment, refine.

4 **Q Can you identify those other people  
5 for me?**

6 A I've -- Peggy Sivesind, Todd Olson,  
7 Mark Underwood, and those are the names that come  
8 to mind.

9 **Q Okay. Since I'm getting so many  
10 objections on research generally, I'm going to  
11 move on now, Mr. Lerner, and I'm going to start  
12 asking you questions specifically about the  
13 Madison Memory Study. And as I explained earlier  
14 and for counsel's benefit and for the  
15 videographer and the transcriber, for this part  
16 of your deposition, you should respond to my  
17 questions as the 30(b)(6) witness, so you are  
18 answering on behalf of Quincy rather than as an  
19 individual.**

20 **And, again, I'm doing this hopefully  
21 to save time and avoid needing to go over the  
22 same questions in your deposition tomorrow.**

23 **Is that clear?**

24 A Yes.

25 MS. RUSK: So for the court reporter,

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1 the videographer, can you, please, note for the  
2 record that this portion of the deposition is a  
3 30(b)(6) deposition, and the time I believe is  
4 9:38 Central; is that correct?

5 VIDEOTAPE OPERATOR: Yes.

6 MS. RUSK: Okay.

7 \* \* \*

8 (The following questions are in Mr.  
9 Lerner's 30(b)(6) capacity.)

10 BY MS. RUSK:

11 **Q When I refer to the Madison Memory  
12 Study, do you know what study I am asking you  
13 about?**

14 A Yes.

15 **Q So there is only one study that you  
16 would refer to as the Madison Memory Study?**

17 A Yes.

18 **Q Okay. Can you give me just a very  
19 brief description about the -- the design in  
20 terms of number of participants, length of the  
21 study?**

22 A The Madison Memory Study was a  
23 quantitative double-blind placebo-controlled  
24 study of -- for over 90 days looking at --  
25 looking for changes in a variety of areas of

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1 cognitive function for participants using an  
2 apoaequorin supplement compared to a placebo.

3 **Q How many participants were in that  
4 study?**

5 A By protocol, we wanted 100 people. We  
6 enrolled -- I believe it was 211 people completed  
7 all 90 days. We enrolled -- initially I think we  
8 enrolled 273, but a variety of those people did  
9 not -- did not start the study, did not  
10 progress -- didn't show up for their first  
11 appointment, or there were just -- they were  
12 disenrolled.

13 **Q Okay. I'm going to ask you more about  
14 dropouts in a minute, but you said 211 completed  
15 the study?**

16 A I think that's the number, yes.

17 **Q Okay. Can you tell me who made the  
18 decision at Quincy to conduct this study?**

19 A I believe the decision was made by  
20 Mark Underwood, but -- it was made by Mark  
21 Underwood.

22 **Q Okay. Was anyone else involved in  
23 that decision?**

24 A In the decision, no.

25 **Q Okay. And who, if anybody, approved**

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1 **going forward with the study?**

2 A I believe that would have been Mark  
3 Underwood.

4 **Q Okay. And were you the lead on  
5 designing the protocol for that study?**

6 A Yes, I was.

7 **Q And were you also the principal  
8 investigator?**

9 A Yes.

10 **Q Can you tell me who was involved in  
11 recruiting participants?**

12 A The individuals working under me,  
13 Peggy Sivesind, Amadeus Benitez.

14 COURT REPORTER: What -- what -- what  
15 was that second name?

16 BY MS. RUSK:

17 **Q I'm sorry. Was that Amadeus Benitez?**

18 A Yes.

19 **Q Okay.**

20 A Some of the other college students,  
21 Kelsey Harter, I believe -- those I know were  
22 involved. There may have been others.

23 **Q Okay. And who was involved in  
24 administering the study?**

25 A The study was administered by the